



PATENT
Attorney Docket No. 001

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Sean Fitzgerald
Sean Fitzgerald

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

William Wanker

Serial No.: 09/290,006

Filing Date: April 11, 1999

For: CUSTOMIZABLE ELECTRONIC
COMMERCE SYSTEM AND METHOD

Examiner: Nguyen, T.

Group Art Unit: 2172

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Technology Center 2100

RESPONSE TO SECOND OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicant respectfully responds to the second Office Action mailed on July 18th, 2001. This response was mailed by first class mail on December 14th, 2001. A petition for a two (2) month extension of time for response is included with this Response.

Claims 1-35 are pending in the application.

RESPONSE

The Office Action mailed on July 18th, 2001 rejected claims 1-13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,550,746 issued to Jacobs in view of U.S. Patent No. 5,999,914 issued to Binn et al. Applicant traverses this rejection.

As stated in the second office Action "Jacobs fails to show ranking of merchants."
(Page 3 of the OA). The second Office Action asserts that "Binn et al. teaches ranking

merchants based on the aggregated of the weighting factors for a given merchant." Column 2, line 38 through column 3 line 8 of Binn is cited in support of ranking merchants based upon weighting factors.

Binn does disclose a type of ranking. In particular, Binn discloses that "[i]n accordance with the merchant ranking, the above process is then repeated for the next highest ranking promotion in the promotion table. Removing the discounted items from future promotional consideration, ensures that the promotion stages discount a particular product only once." (Column 2, lines 42-47.) Binn discloses a process whereby the merchant ranks, applies and removes promotions. Binn makes its focus on promotions clear by stating "in the preferred embodiment, the promotion stages determine which promotions apply by evaluating the promotion table for the highest ranked promotion." (Column 2, lines 12-15.) In Binn *a merchant* applies a ranking to determine which promotion to apply to a *shopper*, thus performing a "merchant ranking." This is a ranking of promotions.

Nowhere within the section of Binn cited in the Office Action is there any reference or teaching to *rank merchants*. That is, there is no teaching or suggestion of using information on merchants to provide consumers with a ranking of merchants, thereby aiding consumers in their decision of which merchant to buy from. (In fact, nowhere within the cited section of Binn is there any reference to more than one merchant - making the present invention of a process for ranking different merchants impossible.) There is no teaching or suggestion to use weighting factors on information *about merchants* to produce a *rank of merchants*. In contrast, Binn teaches away from the present invention by giving a merchant a process to apply promotions to shoppers, and provides no process to advise consumers of which merchant best suits their preferences. In contrast, the present invention provides consumers with a process for sorting through merchants to decide which merchant to buy from.

As stated in the response to the first Office Action, Jacobs teaches away from the claimed invention by disclosing a system of selecting among products from one merchant,

and providing no disclosure or teaching of selecting among merchants. Neither Jabos nor Binn teach or suggest the ranking of merchants to aid consumers in their choice of which merchant to purchase from.

Claim 1 of the present application claims "ranking merchants based on the weighting factors for a given merchant." This ranking is based upon applying weighting factors to information relating to the merchant. Accordingly, one of ordinary skill in the art referencing Jacobs in view of Binn would not find the present invention of claim 1 obvious.

Claims 2-13 depend from claim 1 and are therefore neither anticipated nor obvious by Jacobs or Binn.

Claim 14 includes "ranking said list of merchants carrying the user specified product based on the application of the weighting factors to the merchant specific information." In the Office Action it is stated "that it would have been obvious...to modify Binn et al. by applying weighting factors to said merchant specific information, as taught by Jacobs, *so that the consumer can view the merchant is offering for the good or service*, delivery and performance by looking at the weighting factors." (Office Action, page 7, emphasis added.) Applicant respectfully contends that this misstates the invention as claimed in claim 14. Claim 14 makes no reference to viewing what the merchant has is offering, nor does claim 14 reference any process for displaying what a merchant is offering. Claim 14 claims ranking, based upon weighting factors. Accordingly, the Office Action does not contend that Jacobs in view of Binn teaches claim 14. Despite this, Binn, as discussed above with respect to claim 1, does not disclose or teach the ranking of merchants based upon weighting factors. As stated above, both Jacobs and Binn teach away from the claimed invention. Accordingly, one of ordinary skill in the art referencing Jacobs in view of Binn would not find the present invention of claim 1 obvious.

Claims 15-35 depend from claim 14 and are therefore neither anticipated nor obvious by Jacobs or Binn.

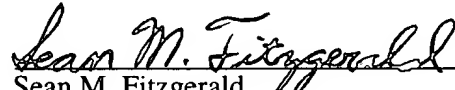
Number 2 on page 2 of the Office Action asserts that Claims 1-13 are rejected under 35 U.S.C. §102(b) as being anticipated by Jacobs. As stated in the second Office Action "Jacobs fails to show ranking of merchants." (Page 3 of the Office Action). As Jacobs "fails to show ranking of merchants" it can not anticipate the present invention as claimed in claim 1. Claim 1 specifically claims "ranking merchants based on the weighting factors for a given merchant" which, as stated in the Office Action, is *not* included in Jacobs. Claim 1, can not be anticipated by Jacobs if Jacobs does not include an element of claim 1. As claims 2-13 depend from claim 1 they can not be anticipated by Jacobs.

Applicant respectfully requests an allowance of all of the pending claims.

Respectfully submitted,

Dated: December 18th, 2001

By:


Sean M. Fitzgerald
Registration No. 42,537

1404 El Camino Real #2
Burlingame, California 94010-4721
Telephone: (650) 558-1447